

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON L RYLEE and JANET R.
RYLEE and SMILEY J. HARRIS

Plaintiff,

No. 05-0068 DFL CMK P

vs.

JOHN ASHCROFT, et al.,

Defendants.

ORDER

_____/

Plaintiffs are proceeding pro se and in forma pauperis in this action against state and federal officials for alleged constitutional violations stemming from the seizure of plaintiffs' "eleven hundred and seventy four marijuana plants," which were allegedly for medicinal and religious purposes. (See e.g. Am. Compl. at 19 (stating the number of plants seized.)) By order filed on January 12, 2005, the court dismissed the first, second, third, fifth and sixth cause of action in plaintiffs' complaint and granted plaintiffs thirty days to file an amended complaint. On February 2, 2005, plaintiffs filed an amended complaint. The complaint is currently before the court for screening pursuant to 28 U.S.C. § 1915(e)(2). Also before the court is plaintiffs' May 4, 2005 request for a default judgment.

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1 As an initial matter, the court denies plaintiffs' request for a default judgment.
2 The request is based on allegations that defendants failed to answer plaintiffs' complaint in a
3 timely manner. However, plaintiffs' amended complaint is only now being screened and was
4 never served on defendants. Accordingly, plaintiffs' motion for default judgment is denied.

5 Background

6 In their amended complaint, plaintiffs allege that in August 2003, Trinity County
7 officials searched plaintiffs Vernon and Janet Rylee's persons and property on the grounds that
8 plaintiffs were committing a felony, namely growing marijuana. (Am. Compl. at 9.) Criminal
9 charges stemming from the marijuana seizure were brought against the Rylees by the Trinity
10 County District Attorney. (*Id.*) Although the Rylees have presented a defense, the state criminal
11 charges against them are not yet resolved. (*Id.*) Plaintiffs further contend that, in October 2003,
12 the Rylees agreed to allow plaintiff Harris to use their land to cultivate his own medicinal
13 marijuana. (*Id.*) In January 2004, plaintiffs sent notice to various Trinity County officials of their
14 status of "seriously ill Californians" who were allowed to cultivate and use medicinal marijuana
15 pursuant to California State law. (*Id.* at 9-10.) On July 12, 2004, defendant Drug Enforcement
16 Agency ("DEA") requested a search warrant for the Rylee's property and later, pursuant to the
17 warrant, the DEA and Trinity County Sheriff's deputies seized marijuana and other items,
18 including guns from plaintiffs. (*Id.*) Plaintiffs were not criminally charged as a result of the July
19 2004 seizure. (*Id.*)

20 Discussion

21 The court must screen plaintiffs' amended complaint to determine whether it is
22 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks
23 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In its
24 review, the court must identify any cognizable claims and dismiss any claims which are legally
25 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
26 monetary relief from a defendant who is immune from such relief. *Id.* A claim is legally

frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiffs, and resolve all doubts in the plaintiffs' favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

Plaintiffs seek damages and injunctive relief for defendants' actions which allegedly violated their First, Fourth and Fifth Amendment rights, violated the California State constitution, constituted Fraud under Federal Rule of Civil Procedure 9(b) and violated the commerce clause and the Tenth Amendment.¹

In plaintiffs' first cause of action, Smiley J. Harris alleges that defendants' seizure of his "three hundred and ninety-two marijuana plants" violated his right to religious freedoms. (Am. Compl. at 12.) The Free Exercise clause requires that one's convictions be free from

¹The causes of action in plaintiffs' complaint all reference only the July 2004 search and seizure of plaintiffs' marijuana plants and other items, such as guns. As no criminal charges stemmed from this seizure, plaintiffs' claims are not barred under Heck v. Humphrey, 512 U.S. 477 (1994). However, any claims stemming from the August 2003 search and seizure by Trinity County officials would be Heck barred, as plaintiffs have pending criminal charges as a result of that seizure.

1 governmental regulation, but there is no requirement that the conduct itself be free from
2 regulation. Employment Div., Dept. of Human Resources v. Smith, 494 U.S. 872, 885-86
3 (1990) (stating the "right of free exercise of religion does not relieve an individual of the
4 obligation to comply with a valid and neutral law of general applicability on the ground that the
5 law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)" and that "if
6 prohibiting the exercise of religion [is] merely the incidental effect of a generally applicable and
7 otherwise valid provision, the First Amendment has not been offended.") Plaintiff Harris does
8 not allege that he belongs to any organized religious group which utilizes marijuana as part of its
9 ceremonies. In fact, plaintiff Harris alleges no affiliation with any church and does not describe
10 any of his religious rites. Plaintiff Harris alleges no facts which would support a finding of any
11 constitutional violation of his right to practice his religious beliefs. Id. He has failed to state a
12 cause of action under the First Amendment and is advised that this cause of action should not be
13 included in any future amended complaint.

14 Plaintiffs' third cause of action asserts a fraud claim under Federal Rule of Civil
15 Procedure 9. Rule 9 concerns pleading special matters and subpart (b) states that all averments
16 of fraud shall be stated with particularity. As such, Rule 9 describes how a litigant in a civil
17 action can bring a fraud claim. Liberally construing plaintiffs' complaint, it appears that
18 plaintiffs are pleading that federal agents fraudulently stated to a magistrate judge that the federal
19 government had jurisdiction over plaintiffs' property. Plaintiffs appear to argue that the federal
20 agents should have known that the federal government had no jurisdiction over their property.
21 As noted above, a court may dismiss a claim that has no arguable basis either in fact or in law.
22 Neitzke, 490 U.S. at 327. Even with a liberal construction, plaintiffs' allegations of fraud
23 against the federal government based on a lack of jurisdiction over plaintiffs' property are based
24 on an indisputably meritless legal theory and must be dismissed. Plaintiffs are advised that they
25 should not include this case of action in any future amended complaint.

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1 Plaintiffs' second, fourth, fifth and sixth causes of action are all based on their
 2 contention that the federal government lacked the authority to regulate plaintiff's "intrastate, non-
 3 commercial possession, use and/or cultivation of marijuana." (Am. Compl. at 12, 16, 17 and 18.)
 4 The United States Supreme Court recently decided Gonzales v. Raich, ___ S.Ct. ___, 2005 WL
 5 1321358 (June 6, 2005), which held that prohibition of intrastate growth of marijuana was
 6 rationally related to regulation of interstate commerce in marijuana. Id. at *19. Therefore,
 7 Congress' Commerce Clause authority includes the power to prohibit the local cultivation and
 8 use of marijuana otherwise authorized by California's Compassionate Use Act. Id.
 9 Accordingly, plaintiffs' second, fourth, fifth and sixth causes of action, which are based on
 10 plaintiffs' contention that Congress lacks the power to regulate the intrastate use and cultivation
 11 of marijuana pursuant to California law are dismissed. In an abundance of caution, plaintiffs are
 12 given leave to amend their fourth, fifth and sixth causes of action. However, their second cause
 13 of action which is solely based on a violation of the commerce clause should not be included in
 14 any amended complaint in light of the holding in Raich.

15 Plaintiffs' eighth cause of action² is a pendant California state constitutional
 16 claim. Plaintiffs allege that defendants Trinity County, the Trinity County Board of Supervisors,
 17 the Trinity County Sheriff's Department, Craig Lorrac and unnamed sheriff's deputies violated
 18 provisions of the California state constitution. Specifically, plaintiffs contend that defendants
 19 should have known that seizing plaintiffs' marijuana pursuant to the Controlled Substances Act
 20 ("CSA") violated plaintiffs' rights as secured by the California state constitution. As the holding
 21 in Gonzales v. Raich, 2005 WL 1321358 explicitly states that application of the CSA to intrastate
 22 growers and users of marijuana for medicinal purposes as otherwise authorized by California
 23 state law is permissible under Congress' commerce clause powers. Id. at *18-19. Accordingly,
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25 ²Plaintiffs have no seventh cause of action in their complaint; the causes of action jump
 26 from the sixth to the eighth. For clarity's sake, the court, as plaintiffs do in their complaint,
 refers to what would be the seventh cause of action as the eighth.

1 this claim fails to state a claim upon which relief may be granted. However, in an abundance of
2 caution, plaintiffs are given leave to amend this cause of action in light of Raich.

3 The court finds that plaintiffs' first, second, third, fourth, fifth, sixth, and eighth
4 causes of action should be dismissed. Plaintiffs are granted leave to amend their fourth, fifth,
5 sixth and eighth causes of action. Plaintiffs are cautioned that they should limit any amended
6 complaint to those claims the court has found sufficient or subject to amendment.

7 If plaintiffs choose to amend the complaint, plaintiffs must demonstrate how the conditions
8 complained of have resulted in a deprivation of plaintiffs' constitutional rights. See Ellis v.
9 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how
10 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there
11 is some affirmative link or connection between a defendant's actions and the claimed deprivation.
12 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
13 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations of
14 official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673
15 F.2d 266, 268 (9th Cir. 1982). Finally, as previously noted, plaintiffs may not base their
16 complaints on allegations that defendants application of the CSA to intrastate growers and users
17 of marijuana for medical purposes, as otherwise authorized by California state law, violated their
18 rights.

19 In addition, plaintiffs are informed that the court cannot refer to a prior pleading in
20 order to make plaintiffs' amended complaint complete. Local Rule 15-220 requires that an
21 amended complaint be complete in itself without reference to any prior pleading. This is
22 because, as a general rule, an amended complaint supersedes the original complaint. See Loux
23 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
24 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
25 original complaint, each claim and the involvement of each defendant must be sufficiently
26 alleged.

1 In accordance with the above, IT IS HEREBY ORDERED that:


2 1. Plaintiffs' motion for a default judgment is denied;

3 2. Plaintiffs' first, second, third, fourth, fifth, sixth and eighth causes of action are
4 dismissed;

5 3. Plaintiffs are given leave to amend their fourth, fifth, sixth and eighth causes of
6 action; and

7 4. Should plaintiffs desire to file an amended complaint, they must do so within
8 thirty days of the date of this order. The amended complaint must comply with the requirements
9 of the Federal Rules of Civil Procedure, bear the docket number assigned to this case, and be
10 labeled "Amended Complaint." Plaintiffs must file an original and two copies of the amended
11 complaint.

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13 DATED: June 22, 2005.

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16 **CRAIG M. KELLISON**
UNITED STATES MAGISTRATE JUDGE
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